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PPNM's/PNM's

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Overview

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- Why Document
- Pre-Price Negotiation Memorandum (PPNM)
- Sample PPNM Format
- Price Negotiation Memorandum (PNM)
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Objectives

- Why document pricing as Fair and Reasonable
- What is a Pre-Price Negotiation Memorandum
- What is a Price Negotiation Memorandum

Why Document

- **It's REQUIRED**
  - **FAR 12.209 States …. Contracting Officer (CO) must establish price reasonableness IAW 13.106-3, 14.408-2 or FAR part 15.4 as applicable…**
    - **FAR 13.106-3(a)(2)**
      - **States … If only one response is received, include a statement of price reasonableness in the contract file**
    - **FAR 14.408-2**
      - **CO shall … (determine) the prices offered are reasonable before awarding the contract. … Particular care must be taken in cases where only a single bid is received**
    - **FAR 15.402**
      - **CO shall -- (a) Purchase Supplies and Services from Responsible Sources at Fair and Reasonable Prices.**
    - **FAR 15.406-3**
      - **CO shall document in the contract file the principle elements of the negotiated agreement.**

What does the PPNM do?

- Establishes the Govt's initial negotiation position
- Explains and justifies how the Govt determined the Negotiation Objective and established the Govt Minimum and Maximum negotiation position
- Identifies contractor data that was or was not relied upon by the Govt
- Identifies other Govt data or agency reviews (i.e.,IGE, DCAA audit or DCMA pre-award survey)
- Primary document to obtain Contract Clearance to enter negotiations
- Permanent record of the negotiation

Note: The AF Form 9 is not a pre-negotiation objective – it is the vehicle to set-aside funds for a requirement

FAR Principles for the PPNM

- **FAR 15.406-1**
  - Pre-Negotiations Objectives
  - The pre-negotiation objectives establish the Govt's initial negotiation position and assist in the Contracting Officer's determination of fair and reasonable price. Based on:
    - (a) Contracting Officer's analysis of the offeror's proposal,
    - (b) pertinent information including field pricing assistance,
    - (c) audit reports,
    - (d) technical analysis,
    - (e) fact-finding results,
    - (f) independent Gov't cost estimates and price histories

DFARS Principles for the PPNM

- **DFAR 215.406-1**
  - **(a) Also consider**
    - (i) Data resulting from application of work measurement systems in developing pre-negotiation objectives; and
    - (ii) Field pricing assistance personnel participation in planned pre-negotiation and negotiation activities
  - **(b) Pre-negotiation objectives shall be documented and reviewed in accordance with Departmental procedures**

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Contractor System Reviews

- **<u>Estimating System Review</u> (DFARS 215.407-5)**
  - Allows CO to know the proposal is verifiable, supportable and has documented cost estimates. Required for Large Business $50 million or more for which cost or pricing data were required

- **<u>Accounting System Review</u> (FAR 9.105(b)(2), DFARS 253.209-1(E), and FAR 16.301-3)**
  - Considered as part of determination of responsibility and required for cost-reimbursable contracts, incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion

Contractor System Reviews (Con't)

- **Contractor Purchasing System Review (CPSR) (FAR 44.201)**

  - Evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management. Without approved CPSR, consent to subcontract is required for cost-reimbursement, T&M, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold or 5 percent of the total estimated cost of the contract

- **Contractor Employee Compensation System Review (CECSR) and Insurance and Pension Review (CIPR) (FAR 42.302(a)(1) and (a)(2)**

  - Normally delegated to and conducted by DCMA

Sample PPNM Format

The Hyperlink below is to a sample format PPNM:

Sample PPNM format

What does the PNM do?

- Tells a complete story of how final price was reached
- Explains/justifies why the final price was fair and reasonable
- Identifies contractor data that was or was not relied upon by the Gov’t
- Is a primary source document for post award audits, terminations, requirements changes, follow-on acquisitions, defaults, etc.
- Is a permanent record of the negotiation

When is a PNO/PNM appropriate?

- A PPNM/PNM **is not** used for:
  - A Formal Source Selection where a Simplified Source Selection Report or Performance Analysis Report is used
  - A competitive acquisition where competition is adequate to support a price fair and reasonable determination
- A PPNM/PNM **is** used for:
  - A competitive environment when price competition is not adequate - single source
  - A non-competitive single-source environment when only one price is received and there's doubt the proposal was submitted with the expectation of competition

FAR Principles for the PNM

- **FAR 15.406-3**
- **Documenting the negotiation - PNM shall include the following:**
  - **(1) Purpose of the negotiation**
  - **(2) Description of the acquisition**
  - **(3) Name, position, and organization of each person representing the contractor and the Gov't**
  - **(4) Current status of any contractor systems**
  - **(5) If cost or pricing data was not required, the exception used and the basis for it**

FAR Principles for the PNM (con't)

- **(6) If cost or pricing data was required, the extent to which the contracting officer --**
  - **(i) Relied on the cost or pricing data submitted and used it;**
  - **(ii) Recognized as inaccurate, incomplete, or non-current any cost or pricing data submitted;**
  - **(iii) Determined an exception applied after data was submitted; therefore, not considered cost or pricing data**
- **(7) Summary of the contractor's proposal, etc**

FAR Principles for the PNM (con't)

- **(8) Most significant facts or considerations for the pre-negotiation objectives**
- **(9) Discussion and quantification of the impact of direction given by Congress, other agencies,**
- **(10) Basis for profit or fee and the profit or fee negotiated**
- **(11) Documentation of fair and reasonable pricing**

DFARS Principles for the PNM

- **DFAR 215.406-3 Documenting the negotiation.**
  - **(a)(7) Include principal factors of pre and post-award contract audits and other advisory reports**
  - **(10) The documentation—**
    - **(A) Must address significant deviations from the pre-negotiation profit objective;**
    - **(B) Should include the DD Form 1547, Record of Weighted Guidelines Application (see 215.404-70), if used, with supporting rationale; and**
    - **(C) Must address the rationale for not using the weighted guidelines method when its**

Bottom Line

Min. | Fair and Reasonable | Max.

PPNM's = ***where you are, how you got there, where you want to be*** AND justify ***why you feel that is where the Government should be***. Summarize the Govt's position on the contractors proposal, what is acceptable and what isn't, and why

PNM's = Final pricing reached during negotiations, should be fair and reasonable to the Govt and the contractor, be supportable with the information presented in the PPNM and be based on pricing/cost analysis performed

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Conclusion

- PPNM and PNM should clearly convey:
  - Purpose of the acquisition and type of contract
  - What the Gov't IGE and contractor proposal presented
  - What data the Gov't looked at during it's review
  - What our negotiation objective (including profit or fee) was and how we got there prior to the negotiation
  - Where we ended up after negotiations were complete and why the Gov't felt each point was fair and reasonable

Additional References

- IG 5315.406-3 Pricing of Subcontract Proposals
  - FAR 15.406-1
  - FAR 15.406-3
  - DFAR 215.406-1
  - DFAR 215.406-3
- Weighted Guidelines
  - DFAR 215.404-70
  - DFAR 215.404-71